

HUSCH BLACKWELL

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April 1, 2015

Eric Schaaf, Esq.
Regional Counsel
United States Environmental Protection Agency
Region II
290 Broadway
New York, New York 10007-1866

Re: Lower Passaic River Study Area Allocation of Responsibility/ *De Minimis*
Settlements

Dear Mr. Schaaf:

Coltec Industries Inc, (Coltec), a party to the Administrative Settlement and Order on Consent for Remedial Investigation/Feasibility Study for the Lower Passaic River Study Area (LPRSA) portion of the Diamond Alkali Superfund Site (Order), and a recipient of a General Notice Letter from the United States Environmental Protection Agency (EPA) concerning the LPRSA, hereby petitions EPA for *de minimis* status under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9622(g)(a). For the reasons set forth below, Coltec meets EPA's criteria for a *de minimis* settlement.

Coltec is alleged to be the successor to Crucible Steel Corporation of America (Crucible), which operated steel mills adjacent to the Passaic River in Harrison, New Jersey. As reflected in the attached submission regarding the alleged connection of Crucible to the LPRSA, there is no credible evidence that Crucible is responsible for any release of dioxins, furans, or polychlorinated biphenyls (PCBs) in the LPRSA. These are the hazardous substances EPA has determined are overwhelmingly driving the risk to human health and the environment in the LPRSA. With regard to the other hazardous substances identified as contaminants of potential concern (COPCs) or ecological concern (COPECs), namely various pesticides and metals, discharges of such hazardous substances by the Crucible were minimal, and have not resulted in impacts to the LPRSA that require remediation.

Coltec endorses and adopts the arguments supporting *de minimis* status set forth in the March 10, 2015 letter to you from Daniel Riesel, submitted on behalf of ten recipients of the

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Order. Coltec acknowledges your letter of March 20, 2015 to Mr. Riesel, expressing EPA's view that issuance of a Record of Decision for the lower eight miles of the LPRSA will present a time for discussion of *de minimis* settlements. Coltec concurs with Mr. Riesel that the time is now ripe to begin such discussions. In any event, Coltec wishes to be included in such discussions whenever they commence.

The Current Situation and Findings Support *De Minimis* Settlements

Now that the Remedial Investigation Report and the Focused Feasibility Study (FFS) for the Lower Eight Miles of the Lower Passaic River have been issued, and the RI/FS for the entire LPRSA is nearly complete, there is sufficient information available to support *de minimis* settlements. The FFS concludes that dioxins, furans, and PCBs that are primarily responsible for the risk to human health and the environment in the Lower Eight Miles. EPA has acknowledged that the Lower Eight Miles contain eighty to ninety-five percent of the total load of hazardous substances in the entire LPRSA, and the soon-to-be-completed RI/FS for the entire LPRSA will not identify any additional hazardous substances as risk drivers. As a result, EPA has more than enough information to honor Section 122(g)'s directive and EPA's own guidance implementing that directive by entering into *de minimis* settlements now.

Application Of Section 122(g) And EPA's Guidance To Coltec

A. The Amount Of Hazardous Substances Contributed By Crucible Is Minimal In Comparison To The Total Amount Of Hazardous Substances In The LPRSA

As recognized in the FFS, upstream and downstream sources continue to release to the LPRSA all of the hazardous substances identified by EPA as being of potential concern except 2,3,7,8-TCDD, and serve as ongoing sources that will maintain such hazardous substances in LPRSA sediments at regional background levels. In-depth investigations of the likely fate and transport of the hazardous substances allegedly released to the LPRSA by Crucible indicate that such alleged releases are minimal in comparison to these ongoing releases and regional background levels. Coltec is prepared to demonstrate to the EPA that historical releases from Crucible are not driving the risk to human health and the environment that requires remediation of the LPRSA.

Because Crucible was not responsible for *any* contribution of the primary hazardous substances driving risk in the LPRSA, and its contribution of any other hazardous substances pales in comparison to the total mass of those hazardous substances in the LPRSA, the total maximum alleged contribution of hazardous substances by Crucible is minimal in comparison to the total amount of hazardous substances in the LPRSA.

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B. The Toxic Or Other Hazardous Effects Of The Hazardous Substances Contributed By Crucible Is Minimal In Comparison To The Toxic Or Other Hazardous Effects Of All Of The Hazardous Substances In The Lower Passaic River Study Area

The FFS makes clear EPA's conclusion that the perceived human health risk relating to the presence of hazardous substances in the LPRSA is attributable to the presence of dioxins, furans, and PCBs. The FFS makes equally clear EPA's conclusion that nearly all the perceived ecological risk relating to the presence of hazardous substances in the LPRSA is attributable to these same hazardous substances.

Because Crucible was not responsible for any releases of 2,3,7,8-TCDD (or any dioxins or furans), or PCBs, to the LPRSA, the toxic or hazardous effects of the hazardous substances Crucible allegedly contributed to the LPRSA are, at most, minimal compared to the toxic or hazardous effects of the dioxins, furans and PCBs that overwhelmingly drive the perceived human health and ecological risk at the LPRSA.

For the reasons outlined above, Coltec respectfully requests that EPA now initiate a process to define and execute a *de minimis* settlement with Coltec as prescribed by Section 122(g) and EPA's own guidance. Coltec looks forward to participating in that process.

Best regards,



Charles E. Merrill
Partner

CEM
Attachment

COLTEC INDUSTRIES INC

Summary of Alleged Nexus to Lower Passaic River

Coltec Industries Inc is alleged to be the successor to Crucible Steel Corporation of America ("Crucible"), which operated steel manufacturing facilities in Harrison, New Jersey, adjacent to river mile 4.0 on the Passaic River. Crucible operated its 48-acre Atha Works from 1900 to 1947, when it sold the property to Charles F. Guyon Inc. Crucible operated the adjoining 14-acre Spaulding Works from 1949 to 1974, when it sold the property to Isadore Spiegel/ Spiegel Trucking, Inc. The former Spaulding Works/ Spiegel Trucking property is now occupied by the Red Bull Soccer Stadium.

I. Operations

Atha Works (1900 - 1947). Crucible's Atha Works steel mill operated crucible furnaces, open hearth furnaces, electric arc furnaces, forging and finishing hammers, rolling mills, and related processes. During World War I, the plant's Ordnance Department manufactured rifle barrels. During World War II, the Ordnance Department, which included the British Shell Shop, manufactured barrels for large cannon, shells for such cannons, submarine periscope tubes and torpedo launching tubes, and rifle barrel steel.

Spaulding Works (1949 - 1974). Crucible's Spaulding Works steel rolling mill produced a wide range of cold rolled alloy, stainless, and high-carbon specialty steels, as well as cast magnets, precision castings, cast alloy tools and alloy welding rods.

Neither dioxin nor PCBs were manufactured or used in Crucible's manufacturing processes.

Environmental conditions at the Atha Works/ Guyon property were investigated under New Jersey ISRA in 1990 and 2005. Environmental conditions at the Spaulding Works/ Spiegel Trucking property were extensively investigated beginning in 2001, culminating in soil remediation in 2005 - 2009, prior to and during the construction of Red Bull Stadium.

II. Alleged Discharges

Atha Works. There is no direct evidence concerning wastewater discharges from the Crucible Atha Works, but effluent from such steel operations typically included de minimis concentrations of iron, chromium, lead, nickel, zinc, and other metals, and lubricating and hydraulic oils. TCDD and PCBs are not typically found in effluent from such operations. Navigational dredging of the Passaic River prior to 1950 likely removed sediment that may have been impacted by discharges from the Atha Works. During ISRA investigations of the Atha Works/ Guyon property in 2005, isolated low-level PCB soil contamination was detected at a railroad siding, a former oil tank location, and a former outdoor electrical substation. There is no evidence (a) that these detections were more than isolated locations; (b) that these detections were associated with any discharge to the Passaic River; or (c) that the PCBs were released prior to Crucible's sale of the property to Guyon in 1947.

Spaulding Works. Although the Crucible Spaulding Works was connected to the Passaic Valley Sewerage Commission (PVSC) sewer trunk line, it also had two outfalls to the Passaic

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River. One was a 6 foot by 6 foot box culvert; the other was a 12-inch storm and cooling water sewer. The culvert was the discharge point for a storm water drainage system which served both the Spaulding Works and the adjacent industrial complex occupied by numerous other companies. In 1970, the PVSC filed suit against Crucible Steel for discharging oil through the box culvert into the Passaic River. Crucible took several steps to prevent oil discharges from its plant, but investigations revealed that the oil observed at the outfall was originating from an unknown off-site source discharging to part of the drainage system known as Guyon Lateral No. 1. This oil discharge ceased when the lateral was plugged. In the PVSC litigation, Crucible disclosed that it occasionally discharged spent pickling acid through the drainage system. In 1970, Crucible installed a reservoir for neutralization of the spent acid, and in 1971 Crucible installed a system for pH monitoring and treatment of this effluent prior to its discharge to the sanitary sewer system.

There is no additional direct evidence concerning wastewater discharges from the Spaulding Works, but effluent from such steel cold rolling operations typically included de minimis concentrations of iron, chromium, lead, nickel, zinc, and other metals, and lubricating and hydraulic oils. TCDD and PCBs are not typically found in discharges from such operations.

During site demolition in 2007 for the construction of Red Bull Stadium, concrete from several areas of the site, and sediment in one basement, exceeded NJDEP's Non-Residential Direct Contact Soil Cleanup Criteria (NRDCSCC) for PCBs. These contaminated materials were disposed of off-site. There is no evidence (a) that these detections were more than isolated locations; (b) that these detections were associated with any discharge to the Passaic River; or (c) that the PCBs were released prior to Crucible's sale of the property to Spiegel Trucking in 1974.

III. Additional Factors

Coltec has cooperated with the United States regarding the LPRSA, signing the Consent Orders with EPA to conduct the RI/FS and the RM10.9 removal action. This cooperation came notwithstanding the fact that there is no evidence that Crucible's former operations contributed the contaminants (primarily dioxin and PCBs) that are driving the investigation and/or response actions conducted or contemplated for the LPRSA. Coltec was not named as a Respondent to NJDEP's directive, but did participate in the settlement of the New Jersey state court litigation.